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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JAMES DANIEL ALEXANDER,
12 Petitioner,
13 v.
14 RAYMOND MADDEN, Warden,
15 Respondent.
16

Case No.: 3:15-cv-002498-GPC-AGS

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

[Dkt. No. 24]

17 Before the Court is Petitioner Alexander's motion for preliminary injunction
18 and/or temporary restraining order. Dkt. No. 24. Upon review of the moving papers, the
19 applicable law and for the foregoing reasons, the Court **DENIES** Petitioner's motion.

20 On November 3, 2015, Petition filed for habeas relief under 28 U.S.C. § 2254.
21 Dkt. No. 1 at 1. In it, Petitioner argues that the state's court's failure to grant him prison
22 conduct credits — i.e., days off of his sentence for good behavior — violates the
23 fourteenth amendment's equal protection clause because he is not being treated the same
24 as similarly situated prisoners. *Id.* at 6. Petitioner further argues that Section 667(e)(2)
25 of the California Penal Code "does not prevent CDCR [California Department of
26 Corrections and Rehabilitation] from granting Petitioner prison conduct credits" and that
27 he is a "class of one" for purposes of his equal protection claim. *Id.* Accordingly,
28 Petitioner argues that the state court's denial of his state habeas petition resulted in a

1 decision that was contrary to, and an unreasonable application of, clearly established
2 federal law. *Id.*

3 On July 27, 2017, *nunc pro tunc* June 29, 2017, Petitioner filed the instant motion
4 for preliminary injunction or temporary restraining order. Dkt. No. 24 at 2. In the
5 motion, petitioner states that he is “not being provided equal treatment compared to
6 similarly situated, and virtually identically situated, prisoners” with regards to the
7 granting of good time credits. *Id.* (emphasis removed). He goes on to argue that the
8 state’s failure to uphold his fourteenth amendment rights is causing him irreparable harm
9 because of his “continued incarceration.” *Id.* at 2 (“Any person being imprisoned, in
10 violation of their constitutional rights is being injured.”). Then, in his prayer for relief,
11 Petitioner asks the court to issue “an immediate order for a preliminary injunction or a
12 temporary restraining order” that: (1) “requires CDCR to retroactively apply the newly
13 implemented good conduct credit provision of the CCR [California Code of
14 Regulations]” and (2) requires CDCR to repeal the language contained within Section
15 2249.1(a)(1) and 3490(a)(1) of title 15 of the CCR. Dkt. No. 24 at 4.

16 **DISCUSSION**

17 “A preliminary injunction is an extraordinary remedy never awarded as of right.”
18 *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 24 (2008). “In each case,
19 courts must balance the competing claims of injury and must consider the effect on each
20 party of the granting or withholding of the requested relief.” *Id.* (citing *Amoco Prod. Co.*
21 *v. Gambell*, 480 U.S. 531, 542 (1987) (internal citations omitted)). As such, “the grant of
22 a preliminary injunction is a matter committed to the discretion of the trial judge.” *Evans*
23 *v. Shoshone-Bannock Land Use Policy Comm’n*, 736 F.3d 1298, 1307 (9th Cir. 2013).
24 This discretion allows courts to properly evaluate when it is appropriate to grant
25 preliminary relief in light of the “infinite variety of situations which may confront it.”
26 *A.L.K. Corp. v. Columbia Pictures Indus., Inc.*, 440 F.2d 761, 763 (3d Cir. 1971).

27 District courts exercise this discretion according to a four-factor test mandated by
28 traditional principles of equity. *ebay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391

1 (2006). The test requires a plaintiff to demonstrate that she is (1) likely to succeed on the
2 merits, (2) likely to suffer irreparable harm in the absence of preliminary relief, (3) that
3 the balance of equities tips in her favor, and (4) that an injunction is in the public interest.
4 *Winter*, 555 U.S. at 20. The standard for issuing a temporary restraining order is the
5 same as that for a preliminary injunction. *See New Motor Vehicle Bd. Of Cal. v. Orrin W.*
6 *Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977); *see also Koller v. Brown*, 224 F. Supp. 3d 871,
7 875 (N.D. Cal. 2016).

8 Even construing Petitioner's motion liberally, *see Hebbe v. Pliler*, 627 F.3d 338,
9 342 (9th Cir. 2010) (internal quotations omitted), it does not satisfy the four elements of
10 this test. Petitioner states that he will suffer irreparable harm in the form of "continued
11 incarceration," Dkt. No. 24 at 3, but irreparable injury is just one of the four elements that
12 must be satisfied in order to obtain a preliminary injunction or restraining order.

13 Petitioner makes no argument about why he is likely to succeed on the merits of his
14 claims, why the balance of equities tips in his favor, or why the injunction is in the public
15 interest. *See generally* Dkt. No. 24. Accordingly, Petitioner's motion must be denied.

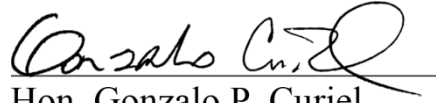
16 Moreover and even assuming that Petitioner had made arguments under all four
17 elements of the *Winter* test, the Court almost certainly would have denied the motion
18 because the relief Petitioner seeks is improper. Petitioner has asked this Court to issue an
19 injunction or restraining order repealing a California state law provision regarding good
20 time credits. Petitioner has also asked the Court to require the CDCR to retroactively
21 apply a good conduct provision passed on May 1, 2017. These requests, however, are not
22 properly before the Court because they were not raised in Petitioner's original habeas
23 petition. *See generally* Dkt. No. 1. Thus, even if Plaintiff had met the elements of the
24 preliminary injunction and/or restraining order, the Court still would have denied the
25 relief requested.

26 Accordingly, the Court **DENIES** Plaintiff's motion for preliminary injunction
27 and/or temporary restraining order.

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IT IS SO ORDERED.

Dated: August 16, 2017


Hon. Gonzalo P. Curiel
United States District Judge